



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: OCTOBER 06, 2022

IN THE MATTER OF:

Appeal Board No. 623160

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 623160 and 623161, the employer appeals from the decisions of the Administrative Law Judge filed February 24 2022, which overruled the initial determinations disqualifying the claimant from receiving benefits, effective February 24, 2021, on the basis that the claimant voluntarily separated from employment without good cause; and charging the claimant with an overpayment of \$5,668.00 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4) and \$8,100.00 in Federal

Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and

on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for the employer part-time from July 2019 through February 23, 2021 and performed both outreach work and data entry. Outreach work includes going out in public, speaking to people on the street and handing out literature, as well as making telephone calls and setting up appointments. Generally, the outreach work was from January through

June 30 each year and the claimant returned to data entry beginning in July. The claimant is disabled. She has HIV/AIDS and diabetes, and she also suffers from obesity and osteoarthritis in both knees.

On February 9, 2021, the executive director advised the claimant that she would be switching from data entry to outreach work. The claimant was uncomfortable doing outreach work, as her doctor had informed her that her medical conditions put her at a higher risk if she got COVID-19.

On February 11, 2021, the claimant requested a reasonable accommodation from the employer, asking to be able to work from home. The data entry work could not be done remotely as the work had to be on the server. The outreach work could not be done remotely, as it involved direct contact with the public. The employer denied the claimant's request to work from home and told her that her options were either to take a leave of absence without pay or to do the outreach work. The claimant told her supervisor that she could not afford to take a leave of absence without pay. Her supervisor told her that she had until February 26, 2021 to advise the employer what she wanted to do.

On February 23, 2021, the executive director told the claimant that the only job she could offer the claimant was that of an outreach worker and that the claimant had to begin performing the outreach duties that day. The claimant told the executive director that she was not comfortable doing the outreach work and that she was not going to take a leave of absence without pay. The claimant was not told that she was fired. She went to her workstation, packed her belongings, and left the building. No doctor advised her that she could not, or should not, do the duties of an outreach worker interacting with the public.

The claimant received \$5,668 in regular unemployment insurance benefits and \$8,100 in FPUC benefits, all in the same weeks.

OPINION: The credible evidence establishes that the claimant's employment ended when she refused to perform the duties of an outreach worker or take an unpaid leave of absence and left the building after gathering her belongings. The claimant was not advised that she was fired. Although the claimant is disabled, suffers from medical conditions which make her uncomfortable working as an outreach worker, and was informed that her conditions put her at a higher risk with respect to COVID-19, she was not advised by a doctor that she could not perform the duties of an outreach worker. In addition, a leave of

absence was offered to the claimant by the employer. We, therefore, conclude that the claimant did not have good cause to quit her job. Her employment ended under disqualifying conditions. Accordingly, the benefits that the claimant received were overpaid.

The credible evidence further establishes that no basis was included in the initial determination of recoverable overpayment to support the recoverability of the regular unemployment benefits. We conclude that those benefits are non-recoverable. Under §2104 (f)(2) of the CARES ACT of 2020, FPUC benefits

are not recoverable for any week in which a claimant is entitled to at least \$1 of regular benefits, PEUC or Extended Benefits. As the claimant was overpaid the regular unemployment insurance benefits that were paid during the same weeks as the FPUC benefits at issue, consistent with federal law, all of the FPUC benefits are recoverable.

DECISION: The decisions of the Administrative Law Judge are modified as follows and, as so modified, are affirmed.

In Appeal Board No. 623160, the initial determination, disqualifying the claimant from receiving benefits, effective February 24, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

In Appeal Board No. 623161, the initial determination, charging the claimant with an overpayment of \$5,668.00 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4) and \$8,100.00 in Federal Pandemic

Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2)

of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, is modified to hold the regular unemployment insurance benefits to be nonrecoverable and the FPUC benefits to be recoverable, and, as so modified, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER